Supreme Court, U.S.
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No. 95-762

In The

Supreme Court of the United States

October Term, 1995

GEORGE YU,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in failing to find that the district court abused its discretion in appointing an incompetent interpreter for the government's principal witness.

2. Whether the court of appeals erred in concluding that a defendant may "waive" his rights to confront witnesses and to effective assistance of counsel, where the district court failed to take remedial action on its own and on defendant's motion.

3. Whether the court of appeals erred in concluding that the petitioner had waived his right to challenge the district court's appointment of an incompetent interpreter.

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No.

In The

Supreme Court of the United States

October Term, 1995

GEORGE YU,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner George Yu respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above case on August 15, 1995.

OPINIONS BELOW

The opinion and judgment of the court of appeals (Appendix A *infra*) was entered on August 15, 1995.

STATEMENT OF JURISDICTION

Indictment Number 94 Cr. 375 was filed in the United States District Court for the Southern District of New York on June 10, 1994. A superseding indictment was filed on August 22, 1994. The trial was commenced on September 19, 1994, and concluded on September 30, 1994. Petitioner was sentenced on January 27, 1995, and a notice of appeal was filed on February 2, 1995.

The judgment of the Court of Appeals for the Second Circuit was entered on August 15, 1995.

Jurisdiction in this Court is based on 28 U.S.C. § 1254(a) and Rule 13.1 of the Supreme Court Rules, providing for certiorari petitions to be made within 90 days of entry of the judgment of the court of appeals.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved in the case are as follows:

Fifth Amendment to the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor

> shall any person be subject to for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; *nor be deprived of life, liberty, or property without due process of law*; nor shall private property be taken for public use, without just compensation.

Emphasis added.

Sixth Amendment to the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; *to be confronted with the witnesses against him;* to have compulsory process for obtaining witnesses in his favor, *and to have the Assistance of Counsel for his Defence.*

Emphasis added.

18 U.S.C. § 1958:

> (a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes to another (including the intended victim) to use the mail or any facility in

interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State of the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, shall be fined not more than $10,000 or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined not more than $20,000 and imprisoned for not more than twenty years, or both; and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both.

(b) As used in this section and in section 1959—

(1) anything of pecuniary "value" means anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage;

(2) "facility of interstate commerce" includes means of transportation and communication; and

(3) "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

18 U.S.C. § 2:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

28 U.S.C. § 1827:

> (d)(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in which judicial proceedings —
>
> > (A) speaks only or primarily a language other than the English language; or
> >
> > (B) suffers from a hearing

impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's hearing comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

* * *

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a

waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter under subsection (d) of this section.

* * *

STATEMENT OF THE CASE

Petitioner was convicted on a single count indictment charging that he plotted the murder of a co-worker at the Fort Lee, New Jersey branch of Merrill Lynch.

At trial, the key testimony was provided by the alleged accomplice, Su Saw, who pleaded guilty in a cooperation agreement with the government, and testified against petitioner. It is beyond dispute that the conviction hinged on Su Saw's testimony.

Su Saw, a Burmese national who claimed to speak several languages, was provided an interpreter who spoke Cantonese, rather than Burmese.

As shown in the relevant portions of the trial transcript (*see* pp. 436ff), a day-and-a-half into Su Saw's cross-examination by defense counsel, the district judge prompted the following exchange:

> THE COURT: I want to ask the interpreter to step up to the witness, please.
>
> Mr. Su, either yesterday or today, have you had any difficulty understanding what the interpreter is telling you?
>
> THE WITNESS: There's a little problem.
>
> THE COURT: As far as you can tell, is that because of the interpreter's Chinese or because the way the questions are being asked?
>
> THE WITNESS: I don't understand.
>
> THE COURT: Whatever difficulty you had in understanding, so far as you can tell, is that because of the way the interpreter expresses herself or because of the way the questions are being asked.
>
> THE WITNESS: My Cantonese is o.k., but its not my best language.
>
> THE COURT: What is your best language.

THE WITNESS: Burmese.

Petitioner's counsel objected:

MR NEARY: To use the phrase, I've got a big problem. I was doubting myself for the last hour or so, my ability to ask questions. Now it appears that it is the witness who, maybe through no fault of his own, even though he has spoken English for a long period of time — the questions being asked either aren't being understood or aren't being answered.

* * *

MR. NEARY: The government has had at least the advantage of many meetings with him,. . .

* * *

MR. NEARY: May I make an application? The application is to get a Burmese translator.

THE COURT: And to adjourn the trial until we do?

MR. NEARY: If adjournment means 1 o'clock or 1:30.

THE COURT: I think adjournment probably means a day, day and a half. We have got to get a Burmese translator, and you would then propose that we do that, the entire direct examination?

MR. NEARY: I think that would be the government's option. I would propose to restart the cross-examination.

THE COURT: No.

Is that your application?

MR. NEARY: Yes.

THE COURT: Denied.

Eventually, the trial and Su Saw's cross-examination continued with the same interpreter, whose services were noticeably deficient.

REASONS FOR GRANTING THE WRIT

Introduction

Petitioner's application for a writ of certiorari should be granted for the following reasons under Rule 10 of the Supreme Court Rules:

(i) A United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter. *See* Rule 10(a).

(ii) A United States court of appeals has decided a federal question in a way in conflict with a state court of last resort. *See* Rule 10(a).

(iii) A United States court of appeals has sanctioned a lower court's departure from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision. *See* Rule 10(a).

(iv) A United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court. *See* Rule 10(c).

I.

PETITIONER WAS DENIED A FUNDAMENTAL RIGHT TO CONFRONT WITNESSES BECAUSE THE DISTRICT COURT PLAINLY ABUSED ITS DISCRETIONARY POWER AND APPOINTED AN INCOMPETENT INTERPRETER FOR THE GOVERNMENT'S PRINCIPAL WITNESS.

The Sixth Amendment guarantees criminal defendants the right to cross-examine any witness. As this Court has held, the essence of the right of confrontation is the right to cross-examination:

> Confrontation means more than being allowed to confront the witness physically. "Our cases construing the [confrontation] clause hold that a primary interest secured by it is the right of cross-examination. *Douglas v. Alabama*, 380 U.S. 415, 418 (1965). Professor Wigmore stated:
>
> > The main and essential purpose of confrontation is *to secure for the opponent the opportunity of cross-examination.* The opponent demands confrontation, not to the idle purpose of gazing upon the witness, of being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal

> putting of questions and obtaining immediate answers. 5 J. Wigmore, Evidence, § 1395, p. 123 (3d ed. 1940) [Emphasis in original.]

Davis v. Alaska, 415 U.S. 308, 315-16 (1973).

Here, the district judge's denial of defense counsel's application to restart the cross-examination violated petitioner's fundamental right to confront the most critical witness, allowing the government to use the services of an interpreter who did not communicate in the witness' primary language, in spite of the district court's *sua sponte* perception that there were noticeable interpreting problems.

As the Court has reasoned, the "right to the assistance of counsel has been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary factfinding process. . . ." *Herring v. New York*, 422 U.S. 853, 857 (1975). Cross-examination is the only device for challenging the integrity of the government's evidence against an accused. Where, as here, the defense counsel's ability to effectively cross-examine *the* critical witness, with a meaningful interpretation service using the witness' primary language, the resulting conviction is a plain denial of petitioner's fundamental right of confrontation.

Not only are criminal defendants entitled to cross-examine, they are also entitled to the effective assistance of counsel. "It has long been recognized that the right to counsel is the right to effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). *See* Sixth Amendment.

As the Court held in *United States v. Cronic*, 466 U.S. 648, 654 (1983):

> The [Sixth] Amendment requires not merely the provision of counsel to the accused, but "Assistance," which is to be "for his defence." Thus, "the core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor." [Citation omitted.] If no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated. . . .

While *Cronic* related to appointed counsel, the principles are plainly applicable here. Petitioner's counsel's participation cannot be held to satisfy the Sixth Amendment merely because he physically confronted the government's principal witness. Without proper interpretation service, of a Burmese interpreter, counsel's cross-examination was "ineffective assistance" in the classic sense of the term. When this is contrasted with the government's pretrial practice-sessions with the witness, the district court's denial of defense counsel's motion to restart the cross-examination with a proper interpreter violated petitioner's fundamental rights under the Sixth Amendment.

The Sixth Amendment was intended to ensure fairness in the adversary system, *see id.* at 656, but "[u]nless the accused receives the effective assistance of counsel, 'a serious risk of injustice infects the trial itself.' [Citation omitted.]" *Id.*

As commentators reason:

> Accordingly, state action, whether by statute or trial court ruling, that prohibits counsel from making full use of traditional trial

> procedures may be viewed as denying defendant the effective assistance of counsel. In considering the constitutionality of such "state interference," courts are directed to look to whether the interference denied counsel "the opportunity to participate fully and fairly in the adversary factfinding process." *If the interference had that effect, then the overall performance of counsel apart from the interference and the lack of any showing of actual prejudice are both irrelevant. For as the Court noted in Cronic, where defendant is "denied counsel at a critical stage of his trial," the presumption that counsel's assistance is essential requires . . . [the] conclu[sion] that a trial is unfair.*

Wayne Lafave & Jerold Israel, *Criminal Procedure* § 11.8, at 568-69 (2d ed. 1992) (emphasis added).

As applied here, petitioner should not be required to show that he was actually prejudiced by the district court's denial of his counsel's application to restart the cross-examination. Instead, the Court should hold that when a defendant's right to confront witnesses, and to the effective assistance of counsel, is interfered with by governmental action (here, the government's use of an improper interpreter), it is a per se fundamental right.

This is the view of the New York Court of Appeals. In *People v. Pavao*, 59 N.Y. 2d 282, 293 (1983), that court held that where an interpreter's *accent* was different from the defendant's accent, even though it was said to be the "same language" (Portuguese), "it was error, as a matter of law, for the court to deny defendant's motion to disqualify the interpreter and appoint a new one." To the extent the lower courts' judgments are in conflict with the

decision of the New York Court of Appeals, this Court's determination is appropriate and should be rendered in favor of petitioner.

With the vast powers of the federal government, it is inconceivable that the prosecutor, and the district court, could not locate an interpreter who speaks Burmese, a distinctly different language from Cantonese-Chinese. The improper use of the Cantonese interpreter below was the functional equivalent to the witness being required to learn and become acclimated with a language other than his own, and then for the defendant to cross-examine for the first time, the testimony which the government has "prepared" with the witness on numerous occasions before the trial. This is fundamentally unfair.

II.

THE DISTRICT COURT EXCEEDED ITS DISCRETION UNDER THE INTERPRETER'S ACT, 28 U.S.C. § 1827.

The court of appeals found, as the government argued below, that the main issue in the case is whether the district court exercised a proper degree of authority under the Interpreter's Act, and whether petitioner somehow "waived" his rights. The court of appeals' analysis is plainly mistaken.

The central provision of § 1827, namely subsection (d)(1), involves a two-step analysis as to when and who may be appointed as an interpreter. In short, the statute says, (i) "if the presiding judicial officer determines" that an interpreter is necessary, then in the exercise of that discretionary authority (second clause), (ii) the judicial officer "shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, . . . the services of an

otherwise qualified interpreter, . . ." (first clause). The "discretion" is not an unfettered discretion, to be exercised at whim. It is a judicious discretion, in the exercise of which, the judicial officer is to achieve the statutory purpose of providing qualified interpretation service in the interest of constitutional fairness. *See United States v. Joshi*, 896 F.2d 1303 (11th Cir.), *cert. denied*, 498 U.S. 986 (1990).

The court of appeals below, adopting the government's argument, held that because petitioner's counsel proceeded with the cross-examination even after his motion to restart the cross-examination had been denied, there was an effective "waiver," as noted in *United States v. Huang*, 960 F.2d 1128, 1135 (2d Cir. 1992). The record, however, does not show a proper waiver.

As articulated by the Court of Appeals for the Fifth Circuit, only the defendant can waive what is really a Sixth Amendment right couched in terms of § 1827:

> If the court below had made a finding that failure to provide him with an interpreter continuously during the trial would so inhibit him, he should have proceeded with the requirements of Section (f)(1) of the Act, because, *a waiver of an interpreter is not a decision for his counsel or the Court to make. It is the defendant's decision, after the Court explains to him the nature and effect of waiver.*

United States v. Tapia, 631 F.2d 1207, 1209 (5th Cir. 1980).

The record below shows that the district court denied defense counsel's legitimate request to restart the cross-examination with a qualified interpreter. That was improperly

denied in violation of petitioner's Sixth Amendment rights. The record below does not show that the district court made any inquiry as to any "waiver" of rights. There was none.

To the extent the defense counsel proceeded with the remainder of the trial, he had no choice but to do so, since his application had already been denied, and it was pointless to regurgitate the same motion before the same judge, when the proper procedure is to seek appellate review.

Under the Fifth Circuit's *Tapia* case, the district court below clearly failed to inquire whether petitioner intended to waive his right to have a qualified interpreter. Because the Second Circuit's holding here and in *Huang* conflicts with that principle, this Court's determination is appropriate and necessary.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to the Court of Appeals for the Second Circuit in this matter, vacating or reversing the judgment of conviction.

Respectfully submitted,

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APPENDIX A — ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED AUGUST 15, 1995

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York on the 15th day of August, one thousand nine hundred and ninety-five.

PRESENT:

HON. ROGER J. MINER,
HON. JOHN M. WALKER, JR.,
HON. FRED I. PARKER,

Circuit Judges

95-1072

UNITED STATES OF AMERICA,

Appellee,

v.

GEORGE YU,

Defendant-Appellant

Order

UPON CONSIDERATION of this appeal from a judgment of the United States District Court for the Southern District of New York, it is hereby

Appendix A

ORDERED, ADJUDGED, AND DECREED that the judgement be and it hereby is AFFIRMED.

Appeal from a judgment entered on February 2, 1995 in the United States District Court for the Southern District of New York (Mukasey, J.) after a jury trial, convicting the defendant-appellant of one count of murder-for-hire, in violation of 18 U.S.C. §§ 1958 and 2.

The proof at trial, which is not challenged on appeal, revealed that defendant-appellant George Yu began working in the Fort Lee office of Merrill Lynch in 1991, at which time an individual named Howard Lippman was the office's top producer. Near the end of 1993, Yu sought the aid of an individual named Su Saw to assist him with the murder of Lippman. Yu apparently believed that, were Lippman murdered, Yu would receive some of Lippman's lucrative accounts.

Saw eventually contracted an individual named Thien Nguyen, and the two agreed that Nguyen would carry out the murder. Nguyen lived in Virginia and, unbeknownst to Saw, was a paid informant assisting the FBI in Washington in narcotics-related investigations. Nguyen did not immediately disclose the murder plot to the FBI. Rather, he hoped to obtain money from Saw by pretending that he would commit the murder.

Various activities relating to the murder plan took place during the early part of 1994. Yu supplied Saw with information regarding Lippman and travelled with Saw to New Jersey to demonstrate the route that Lippman took from his office to his home. In addition, Nguyen travelled from Virginia to New York, where Saw provided the necessary information to Nguyen.

At the end of May 1994, however, when it appeared that

Appendix A

Nguyen's usefulness in drug-related investigations in Washington would end, he told the FBI about the murder plot in the hope that it would lead to work as an informant in the New York area. After Nguyen had informed the FBI of the plot, Nguyen made a controlled telephone call from Virginia to Saw in Manhattan.

Thereafter, Nguyen again travelled to New York, having indicated to Saw that he would soon commit the murder. However, when the two met to make final plans, FBI agents arrested Saw. Saw immediately chose to cooperate after Saw contracted after a trial.

Yu first challenges the use of a Cantonese, rather than a Burmese, interpreter in connection with Saw's testimony at trial. He contends that, because Burmese was Saw's "first" language, a Burmese interpreter should have been provided under the provisions of the Court Interpreters Act, 28 U.S.C. § 1827. He also contends that the use of a Cantonese interpreter deprived him of a fair trial and interfered with his counsel's performance. We rejected these arguments on the ground that they were waived.

We have observed that, under subsection (f)(1) of the Court Interpreters Act, "[a]ny individual other than a witness who is entitled to interpretation . . . may waive such interpretation in whole or in part," and that a defendant may waive "any objection he may have to the certification or performance of a translator for a witness." *United States v. Huang*, 960 F.2d 1128, 1135 (2d Cir. 1992). In addition, it is clear that tactical decisions to forego objections preclude even plain error review. *See United States v. Olano*, 113 S.Ct. 1770, 1777 (1993); *accord United State v. Yu-Leung*, 51 F.3d 1116, 1122 (2d Cir. __.

In light of the foregoing, Yu has forfeited his right to

challenge the use of the Cantonese interpreter. Although the district court first denied Yu's application for a Burmese interpreter, the court reconsidered its ruling and discussed the possibility of an adjournment to seek such an interpreter. The court then presented to Yu's attorney the tactical advantages of keeping the Cantonese interpreter. After conferring with his client, the attorney stated: "The world is never perfect, Judge. I'm prepared to continue." The district court responded: "Not that it matters, but wise choice." Thus, Yu clearly decided to waive his right under the statute, a tactical decision precluding our review.

Yu next challenges his conviction on the ground that federal jurisdiction was fabricated by federal agents. This argument is meritless. Yu relies principally on three decisions for his claim: *United States v. Coates,* 949 F.2d 104 (4th Cir. 1991); *United States v. Brantley,* 777 F.2d 159 (4th Cir. 1985), *cert. denied,* 479 U.S. 822 (1986); and *United States v. Archer,* 486 F. 2d 670 (2d Cir. 1973). In these cases, the convictions were reversed as a result of manufactured federal jurisdiction. We have described in *Archer,* the only binding precedent cited by Yu, as being concerned with "government overreaching." *See United States v. Keats,* 937 F.2d 58, 65 (2d Cir.), *cert. denied,* 502 U.S. 950 (1991).

In marked contrast to the above cases, this case involves various interstate activities that occurred before the federal agents were made aware of the plot. Specifically, in February of 1994, Yu drove Saw from Manhattan to New Jersey to give Saw the map and photographs of Lippman. In addition, Nguyen had travelled from Virginia to New York in February and March to meet with Saw regarding the scheme, and Saw had taken Nguyen to New Jersey. Finally, Saw and Nguyen had discussed the scheme in telephone conversations prior to the end of May 1994, while Saw was in New York and Nguyen was in Virginia. These

actions satisfied the interstate commerce element of the crime, and render Yu's claim meritless. *See Keats*, 937 F.2d at 64-65 (concept of manufactured federal jurisdiction at issue in *Archer* not implicated where defendant's own actions — voluntarily choosing to engage in a mail fraud scheme with individuals from other states — formed basis for federal jurisdiction).

/s/_____
HON. ROGER J. MINER,

/s/_____
HON. JOHN M. WALKER, JR.,

/s/_____
HON. FRED I. PARKER,

Circuit Judges.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FILED FEBRUARY 2, 1995

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case Number: S1 94 Cr. 375 (MBM) (01)

Bobbi C. Sternheim
Attorney's Name

UNITED STATES OF AMERICA

vs.

George Yu

THE DEFENDANT:

* * *

XX was found guilty *as charged* after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s) which involve the following offenses:

TITLE SECTION
18 USC § 1958

NATURE OF OFFENSE
Murder for hire

DATE OF OFFENSE
On or about 06/07/94

Appendix B

COUNTS
1

The defendant is sentenced as provided in pages 2 through *5* of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. AUSA Chauncey Parker

* * *

XX It is ordered that the defendant shall pay a special assessment of *$50.00*, for count(s) *one*, which shall be due.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: *050-54-8736*

Defendant's Date of Birth: *12/11/64*

January 27, 1995
Date of Imposition of Sentence

Defendant's Address:
9019 Wall St., Apt. 5D
North Bergen, NJ 07047

s/ Michael B. Mukasey
Signature of Judicial Officer

Appendix B

Michael B. Mukasey, U.S.D.J.
Name & Title of Judicial Officer

DATE: *February 2, 1995*

Certified True Copy by: *s/ Francis Schwartz*
Deputy Clerk

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of prisons to be imprisoned for a term of *one hundred and twenty (120) months.*

* * *

XX The defendant is remanded to the custody of the United States Marshall.

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of *three (3) years.*

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not legally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a conditions of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the

term of supervised release. The defendant shall comply with the following additional conditions:

* * *

XX The defendant shall not possess a firearm or destructive device.

During the time defendant is on supervised release he is to provide the Probation Office with access to financial information and pay fifty (50) cents on the dollar for the cost of supervised release from available assets and to the extent that his income exceeds $1,500.00 per month after taxes.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquires by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

Appendix B

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer with 72 hours of any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrest or questioned by a law enforcement officer,

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

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13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record of personal history of characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINE

The defendant shall pay a fine of $ *-0-*. The fine includes any costs of incarceration and/or supervision.

__ This amount is the total of the fines imposed on individual counts, as follows:

The Court found that the defendant does not have the ability to pay a fine. The defendant is to pay the cost of imprisonment to the extent he earns money while incarcerated or funds are available and is to pay the cost of supervised release as set forth on page three of this judgment.

* * *

STATEMENT OF REASONS

XX The court adopts the factual findings and guideline application in the presentence report.

OR

* * *

Appendix B

Guideline Range Determined by the Court:

Total Offense Level: *32*

Criminal History Category: *I*

*Imprisonment Range: *121* to *151* months

Supervised Release Range: *2* to *3* years

Fine Range: $ *17,500.00* to $ *175,000.00*

XX Fine is waived or is below the guildeline range, because of the defendant's inability to pay.

Restitution: $ *N/A*

* * *

OR

* * *

OR

The sentence departs from the guideline range

* * *

XXXX for the following reason(s):

* * *

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* The statutory maximum sentence of one hundred twenty (120) months supersedes the guideline minimum of one hundred twenty-one (121) months.

APPENDIX C — INDICTMENT FILED AUGUST 22, 1994

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SI 94 Cr. 375 (MBM)
Filed August 22, 1994

UNITED STATES OF AMERICA,

- v.-

GEORGE YU,

Defendant.

INDICTMENT

The Grand Jury charges:

From in or about late 1993 through on or about June 7, 1994, in the Southern District of New York and elsewhere, GEORGE YU, the defendant, unlawfully, willfully and knowingly travelled, and caused another to travel, in interstate commerce, and used, and caused another to use, a facility in interstate commerce, to wit, a telephone, with intent that a murder be committed in violation of the laws of the States of New York, New Jersey and Virginia, as consideration for the receipt of, and as consideration for a promise and agreement to pay, a thing of pecuniary value, to wit, money.

(Title 18, United States Code, Sections 1958 and 2.)

/s/
Foreperson

/s/ Mary Jo White
Mary Joe White
United States Attorney